

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

ROYAL ALLIANCE ASSOCIATES, INC.,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:08-cv-449 (LMB/JFA)
v.	)	
	)	
BRANCH AVENUE PLAZA, L.P.,	)	
	)	
Defendant.	)	
	)	

**JOINT STIPULATION OF UNDISPUTED FACTS**

Plaintiff Royal Alliance Associates, Inc. (“Royal Alliance”) and Defendant Branch Avenue Plaza, L.P. (“Branch Avenue Plaza”), by their undersigned counsel, hereby stipulate to the following statements solely for purposes of this litigation. The parties reserve the right to dispute the relevance of facts set forth in this Stipulation, and to assert the truth and relevance of other facts.

1. On or around February 22, 2008, Branch Avenue Plaza initiated FINRA Dispute Resolution Case No. 08-00532 against United Securities Alliance, Inc. (“United Securities”), Royal Alliance, and Gary L. Ackerman. *See* Statement of Claim at 2-4, attached as Exhibit B to the Declaration of Theodore J. Sawicki (“Sawicki Dec.”), submitted on June 4, 2008.

2. Ackerman was a United Securities registered representative who, according to Branch Avenue Plaza’s allegations in the Arbitration, advised Branch Avenue Plaza and its principals in 2004 regarding an investment in certain commercial

property located at 5201 West 86<sup>th</sup> Street, Indianapolis, Indiana (the “Investment Property”). *Id.* at 2-4.

3. Branch Avenue Plaza alleges in the Arbitration that Ackerman “made multiple misrepresentations and omissions of material fact when recommending the purchase of an interest” in the Investment Property, which was acquired by Branch Avenue Plaza in December 2004. *See id.* at 3.

4. Branch Avenue Plaza further alleges in the Arbitration that United Securities “is jointly and severally liable for [Ackerman’s] wrongful acts . . . due to its control over [Ackerman], its failure to properly supervise [him], its lack of good faith supervision and negligent supervision, respondeat superior, “control person” liability under Virginia and federal law, and its adoption and ratification of [his] wrongful acts . . . .” *Id.* at 5, 13.

5. Branch Avenue Plaza’s theory of recovery against Royal Alliance in the Arbitration is that Royal Alliance is the successor-in-interest to United Securities as a result of a transaction that took place between Royal Alliance and United Securities pursuant to a December 29, 2006 agreement. *See id.* at 5; Defendant’s Responses to Requests for Admission at ¶ 6, attached as Exhibit A to the Second Declaration of Theodore J. Sawicki (“Second Sawicki Dec.”), submitted on September 17, 2008.

6. In the Arbitration, Branch Avenue Plaza asserts claims for securities fraud, common law fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, negligent supervision, recommendation of unsuitable investments, and breach of contract, and seeks recovery of \$3,917,863, plus interest, compensation for

opportunity loss, punitive damages, and attorneys' fees and costs. *See* Statement of Claim at 15.

7. On December 29, 2006, Royal Alliance and United Securities entered into the Transfer Agreement. *See* Transfer Agreement, attached as Exhibit A to the Declaration of Arthur Tambaro ("Tambaro Dec."), submitted on June 4 and 18, 2008.

8. On February 23, 2007, Royal Alliance and United Securities entered into the Amendment to Transfer Agreement, attached as Exhibit A to the Tambaro Dec.

9. A May 6, 2008 Certificate of Existence with Status in Good Standing states that United Securities is or was a Nevada corporation in good standing. *See* Certificate of Existence with Status in Good Standing at 1, attached as Exhibit G to Sawicki Dec.

10. On March 18, 2008, United Securities registered with the United States Securities and Exchange Commission as an active investment adviser. *See* United Securities Alliance, Inc., Uniform Application for Investment Adviser Registration ("Form ADV") (Mar. 18, 2008) at D-3, attached as Exhibit A to the Sawicki Dec.

11. Specifically, according to the Form ADV, United Securities offers "financial planning[,]" "portfolio management[,]" and adviser selection services, managing assets of approximately \$100,000,000. *Id.* at 1, 3, 8, 9, 70.

12. During its last fiscal year, according to the Form ADV, United Securities provided investment advisory services to approximately nine hundred clients, comprised of "individuals" and "high net worth individuals." *Id.* at 7-8.

13. According to the Form ADV, United Securities provides financial planning services to between fifty-one and one hundred clients. *Id.* at 9.

14. According to the Form ADV, United Securities is compensated by its clients by receiving a percentage fee based on the assets under management, by levying hourly charges and fixed fees, and by securing commissions. *Id.* at 8.

15. United Securities operates its business with between eleven and fifty employees. *Id.* at 7.

16. United Securities' Form ADV reflects that its current direct and indirect owners are Dana Loraine Davis, Jeffrey James Cannella, US Alliance Holdings, Inc., Michael Washington Jones, Patrick Emanuel Sutherland, Ronald Keith Bloomingkemper, Ronald James Petrinovich, and Insigne Consulting, Inc. *Id.* at 22-25.

18. According to the Form ADV, United Securities' is not "succeeding to the business of a registered investment adviser." *Id.* at 3, 6.

19. There is no written contract or agreement directly between Royal Alliance and Branch Avenue Plaza. Defendant's Responses to Requests for Admission at ¶ 4.

21. Branch Avenue Plaza's United Securities account did not transfer to Royal Alliance, and Branch Avenue Plaza has never received any investment advice directly from Royal Alliance. *Id.* at ¶¶ 1, 5.

22. Ackerman has never been a Royal Alliance registered representative. *Id.* at ¶ 7.

23. Ackerman left United Securities and became affiliated with CapWest Securities, Inc. in November 2005. *See* Certified BrokerCheck Report for Gary Lynn Ackerman at 1, attached as Exhibit B to the Second Sawicki Dec.

24. Ackerman is currently a broker with CapWest Securities, Inc. *Id.*

25. United Securities is not currently registered with FINRA as a broker-dealer.

26. Certain current registered representatives of Royal Alliance are also currently registered as investment advisors through United Securities.

27. Royal Alliance is a FINRA member, and by virtue of such membership, it has agreed to be bound by applicable FINRA Rules.

28. Certain books and records of United Securities are stored at Royal Alliance offices.

29. By virtue of its membership in FINRA, Royal Alliance has agreed to be bound by FINRA Rule 12200, when applicable.

30. FINRA Rule 12200 states:

“Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:

- (1) Required by a written agreement, or

- (2) Requested by the customer;

- The dispute is between a customer and a member or associated person of a member; and

- The dispute arises in connection with the business activities of the member or the associated person, except disputes involving the insurance business activities of a member that is also an insurance company.”

31. FINRA Rule 0120 states: “Definitions. When used in these Rules, unless the context otherwise requires: ...(g) Customer. The term "customer" shall not include a broker or dealer...”

32. United Securities’ Form ADV states that United Securities is an affiliate of Royal Alliance.

AGREED to this 18th day of September, 2008 by:

\_\_\_\_\_/s/\_\_\_\_\_  
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ATTORNEYS FOR PLAINTIFF  
Royal Alliance Associates, Inc.

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that the within and foregoing has been filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following counsel of record:

W. Scott Greco  
Greco & Greco, P.C.  
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This 18th day of September, 2008.

\_\_\_\_\_/s/\_\_\_\_\_  
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